

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JURJITA VAICAITIENE, on behalf of
herself and all others similarly
situated,

Plaintiff,

- against -

PARTNERS IN CARE, INC.; AND
VISITING NURSE SERVICE OF NEW
YORK, INC.;

Defendants.

No. 04 Civ. 9125 (RMB)

ECF CASE

**AFFIDAVIT OF JURGITA
VAICAITIENE**

STATE OF NEW YORK)

) ss.:

COUNTY OF KINGS)

1. I am the plaintiff in this action. I was employed as a home health aide by the defendants from in or about September 7, 2002 through March of 2004. I submit this affidavit in support of plaintiff's motion to send notice of this action to similarly situated current and former employees of the defendants.

2. As a home health aide I was responsible for the care of VNSNY patients. My duties included, but were not limited to, personal care such a general hygiene, bathing, dressing and the like. Assisting or accompanying the VNSNY patient with daily activities such as walking, exercising, eating, administering medication and other activities.

3. I also performed services typically performed by trained personnel (such as registered or practical nurses) including the monitoring of patient's vital signs (to the extent warranted by the patient's medical condition) and the administration of medical treatments including catheter placement, feeding tubes and other items.

4. Although it varied from patient to patient, approximately thirty percent (30%) of my overall work-time with VNSNY patients was expended doing general household work including cleaning of all the rooms in the house or apartment, household laundry, including laundry for the VNS patient's family members, household food-shopping, cooking, food preparation and dishwashing and other tasks that were not directly related to the patient or to any particular patient.

5. The task code form provided by defendants assigned codes for time spent on non-patient related general household work, including "clean[ing]", "grocery shopping", "laundry", "travel time" and other "non-personal" matters."

6. All of my work for VNSNY patients was overseen by the VNSNY nurses who supervised us. At the commencement of each VNSNY patient assignment I was given written instructions regarding the patient's care by a VNSNY nurse.

Annexed hereto as Exhibit A is an example of the written instruction form VNSNY nurses provided taken from the defendants' Employee Handbook. A copy of the entire handbook is annexed hereto as Exhibit B.

7. In addition, I reported directly to VNSNY nurses each time they visited the patients under my care. In the event I had concerns or problems with a patient I would report such matters to a VNSNY nurse.

8. From time to time I discussed with supervising VNSNY nurses the extent to which I was called upon to do general household work which was not related to the care of the VNSNY patient. On such occasions I was told to do my best to keep each patient happy and to accommodate requests for general household work to avoid patient complaints.

9. I specifically recall several instances in which VNSNY patients directed me to do general household work such as scrubbing the walls outside their apartment, getting on my hands and knees to scrub their kitchen floor and bathrooms, washing and ironing clothing for family members and other matters. When I discussed these matters with the supervising VNSNY nurse, I was told to accommodate the VNSNY patients' requests.

10. During my employment by the defendants I sometimes worked substantial amounts of overtime, i.e.,

hours in excess of forty per week, but I was not paid overtime compensation for these additional hours. Annexed hereto as Exhibit C are some of my pay stubs showing overtime hours worked for which I was not paid overtime.

11. The defendant's Employee Handbook stated that we would "be paid at the regular hourly rate of pay for all hours worked up to forty (40) and then time and a half (1.5x) minimum wage or payment at the regular hourly rate, whichever is greater, for all hours worked over forty (40) per week. Annexed hereto as Exhibit D is an excerpt from the Employee Handbook stating the foregoing "Payment Policies." Its my understanding that these payment policies were consistently applied throughout the company.


Jurgita Vaicaitiene

Sworn to before me
this 20th day of April, 2005


Notary Public

ROXANNA MORA
Commissioner of Deeds
City of New York
No. 2-12218
Commission Expires April 26, 2007

Exhibit A

Handbook for Home Health Aides - Appendix

Partners in Care



Partners in Care™

• A Subsidiary of the Visiting Nurse Service of New York • 1250 Broadway • New York, NY 10001 • 212-290-3131

HOME HEALTH AIDE PLAN OF CARE

✓ INITIAL ☐ RENEWAL

PATIENT NAME: MARY GREEN SCHEDULE: DAYS 5 HOURS 8 ID # KS12345
 ADDRESS: N.Y.C., NY. 10001

TO REACH PARTNERS IN CARE ON WEEKDAYS AFTER 6PM, AND ON WEEKENDS AND HOLIDAYS ALL DAY, CALL THE ANSWERING SERVICE AT 212-290-3131.

DO NOT REMOVE FROM PATIENT'S HOME

PLAN OF CARE	SERVICES TO BE PROVIDED	INSTRUCTIONS	FREQUENCY OF TASK
✓	BATH <input type="checkbox"/> Bed <input type="checkbox"/> Sponge <input checked="" type="checkbox"/> Tub <input type="checkbox"/> Shower	ASSIST PT. IN/OUT OF TUB - USE SHOWER CHAIR	
✓	MOUTH CARE	CLEANSE DENTURES EVERY A.M.	
✓	FOOT CARE	APPLY KERI LOTION TO FEET EVERY A.M. AFTER BATH.	
✓	SHAMPOO	THREE TIMES PER WEEK	
✓	SKIN CARE (specify)	KERI LOTION TO BACK AS PER PT. REQUEST.	
✓	NAIL CARE	KEEP NAILS CLEAN & FILED.	
✓	TOILETING	ASSIST PT. TO B.R. W/ CONTACT SUPPORT	
✓	INCONTINENT CARE		
✓	DRESSING	ASSIST W/ BUTTONS, ZIPPERS	
	INFANT CARE (specify)		
✓	REINFORCE DIET INSTRUCTION	MONITOR PT.'S SALT INTAKE	
	<input type="checkbox"/> FEED PATIENT <input type="checkbox"/> ASSIST WITH FEEDING DIET:	LOW SALT	
✓	WALKING <input checked="" type="checkbox"/> Indoors <input checked="" type="checkbox"/> Outdoors	MONITOR: INDOORS W/ CANE, OUTDOORS W/ WALKER	
	TRANSFERS		
	TURNING and POSITIONING		
	RANGE OF MOTION <input type="checkbox"/> Active <input type="checkbox"/> Passive		
	EYE CARE (specify)		
	DRESSING (Wound Care) (specify)		
	CATHETER CARE (specify)		
	OSTOMY CARE (specify)		
✓	TEMPERATURE: <input type="checkbox"/> Oral <input type="checkbox"/> Rectal <input type="checkbox"/> Axillary <input type="checkbox"/> Record in Home		
✓	PULSE/RESPIRATIONS	TAKE PULSE BEFORE A.M. MEDS; REPORT PULSE BELOW 60 TO R.N.	
✓	INTAKE/OUTPUT		
✓	MEDICATIONS <input type="checkbox"/> Assist <input checked="" type="checkbox"/> Remind	OFFER PRE-POURED MEDS (BOX) TO PT.	
✓	MEAL PREPARATION <input checked="" type="checkbox"/> Breakfast <input checked="" type="checkbox"/> Lunch <input checked="" type="checkbox"/> Dinner <input checked="" type="checkbox"/> Snack	WATCH SALT - DO NOT ADD.	
✓	CLEAN <input checked="" type="checkbox"/> Pt's Room <input checked="" type="checkbox"/> Bathroom <input checked="" type="checkbox"/> Kitchen <input checked="" type="checkbox"/> Pt Care Equip		
✓	SHOPPING Where? <u>SLONS AT CORNER</u>	How Often? <u>WEEKLY</u>	
✓	LAUNDRY Where? <u>BASEMENT</u>	How Often? <u>WEEKLY</u>	
✓	ACCOMPANY TO: <input checked="" type="checkbox"/> MD/Clinic <input type="checkbox"/> Other (specify)	<u>TO DR. BROWN EVERY MONTH.</u>	
✓	SUPERVISE SAFETY OF PATIENT	<u>AMBULATING IN + OUT OF DOORS</u>	
	Special Safety Precautions (specify)	<u>REMOVE ENVIRONMENTAL BARRIERS. CAREFULLY WATCH PT'S AMBULATION TO & FROM B.R. + USE FULL CONTACT SUPPORT DURING AMBULATION.</u>	
	OTHER (specify)	<u>REPORT ANY PROBLEMS OR CHANGES TO RN FIELD SUPERVISOR OR VN AS SOON AS THEY ARE DISCOVERED.</u>	

Discussed with Patient Family/Designee and Completed by: sign J. Smith RN print S. SMITH RN date 6/1/98Patient Refuses Service ☐Patient/Family/Designee: sign Mary Green print MARY GREEN relationship PATIENT date 6/1/98

Reviewed / / by / / by / / by / / by

Inv'd 11/96

YELLOW, POST IN CLIENT'S HOME • PINK, RETAIN IN CLIENT'S RECORD

Exhibit B

EMPLOYEE HANDBOOK FOR HOME HEALTH AIDES

Revised March 2002

Exhibit C



PARTNERS IN CARE
1250 BROADWAY
NEW YORK, NY 10001

Period Ending: 01/10/2003
Pay Date: 01/17/2003

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
NY: 0
New York Cit: 0

JURGITA VAICAITIENE
7122 BAY PKWY
APT #2
BROOKLYN, NY 11204

Social Security Number: 352-96-6457

Earnings	rate	hours	this period	year to date
Regular	6.7500	40.00	270.00	783.00
Ot/Diff			25.22	79.54
Weekend	6.7500	26.00	175.50	580.50
Hol@1.5				283.50
Gross Pay			\$470.72	1,726.54

Other Benefits and Information

	this period	total to date
Prior 1/2/H1.5	40.00	144.00
Reg/Ot/Hol	40.00	116.00
Total Hours	40.00	116.00
Total Hrs	66.00	230.00
Ytd Hrs 8685	40.00	
1400 Hours	66.00	
1400 Hours		630.00

Deductions	Statutory		
Federal Income Tax	-57.30	250.87	
Social Security Tax	-29.19	107.05	
Medicare Tax	-6.82	25.03	
NY State Income Tax	-15.88	69.27	
New York Cit Income Tax	-10.23	42.84	
NY SUI/SDI Tax	-0.60	1.80	
Other			
Union Dues	-5.40	16.20	
Car Fare		-42.25	
Net Pay		\$345.30	

40 x 6.75 = 270
26 x 10.1 = 260
530

Your federal taxable wages this period are \$470.72



PARTNERS IN CARE
 1250 BROADWAY
 NEW YORK, NY 10001

Period Ending: 01/31/2003
 Pay Date: 02/07/2003

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 0
 NY: 0
 New York Cit: 0

JURGITA VAICAITIENE
 7122 BAY PKWY
 APT #2
 BROOKLYN, NY 11204

Social Security Number: 352-96-6457

Earnings	rate	hours	this period
Regular	6.7500	24.00	162.00
Ot/Diff			36.86
Private Pay	6.7500	28.00	189.00
Weekend	6.7500	26.00	175.50
Hol@1.5			
Sp Pay			
Gross Pay			\$563.36

year to date
1,188.00
139.68
378.00
837.00
405.00
200.00
3,147.68

Other Benefits and Information

	this period	total to date
Prior 1/2/H1.5	24.00	216.00
Reg/Ot/Hol	24.00	176.00
Total Hours	24.00	176.00
Total Hrs	<u>78.00</u>	424.00
Ytd Hrs 8685	24.00	
1400 Hours	78.00	
1400 Hours		824.00

Deductions

Statutory

Federal Income Tax	-71.19	424.10
Social Security Tax	-34.93	195.16
Medicare Tax	-8.17	45.64
NY State Income Tax	-21.77	117.93
New York Cit Income Tax	-13.65	73.92
NY SUI/SDI Tax	-0.60	3.60

Other

Union Dues	-5.40	27.00
Car Fare		-42.25

Net Pay **\$407.65**

$40 \times 6.75 = 270$
 $38 \times 10.1 = 380$
 650

Your federal taxable wages this period are \$563.36



PARTNERS IN CARE
1250 BROADWAY
NEW YORK, NY 10001

Period Ending: 02/07/2003
Pay Date: 02/14/2003

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
NY: 0
New York Cit: 0

JURGITA VAICAITIENE
7122 BAY PKWY
APT #2
BROOKLYN, NY 11204

Social Security Number: 352-96-6457

Earnings	rate	hours	this period
Regular	6.7500	24.00	162.00
Ot/Diff			23.28
Private Pay	6.7500	28.00	189.00
Weekend	6.7500	12.00	81.00
Hol@1.5			
Sp Pay			
Gross Pay			\$455.28

year to date
1,350.00
162.96
567.00
918.00
405.00
200.00
3,602.96

Other Benefits and Information

	this period	total to date
Prior 1/2/H1.5	24.00	240.00
Reg/Ot/Hol	24.00	200.00
Total Hours	24.00	200.00
Total Hrs	64.00	488.00
Ytd Hrs 8685	24.00	
1400 Hours	64.00	
1400 Hours		888.00

Deductions	Statutory	
	Federal Income Tax	-54.98
	Social Security Tax	-28.22
	Medicare Tax	-6.60
	NY State Income Tax	-14.97
	New York Cit Income Tax	-9.65
	NY SUI/SDI Tax	-0.60
	Other	
	Union Dues	-5.40
	Car Fare	-51.25
	Adjustment	
	Car Fare	+9.00
Net Pay		\$343.86

40 x 6.75 = 270
24 x 10.1 = 240
510

Your federal taxable wages this period are \$455.28



PARTNERS IN CARE
1250 BROADWAY
NEW YORK, NY 10001

Period Ending: 02/14/2003
Pay Date: 02/21/2003

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
NY: 0
New York Cit: 0

JURGITA VAICAITIENE
7122 BAY PKWY
APT #2
BROOKLYN, NY 11204

Social Security Number: 352-96-6457

Earnings	rate	hours	this period
Ot/Diff			29.10
Sp Pay	7.1430	56.00	400.00
Weekend	7.1430	14.00	100.00
Regular			
Hol@1.5			
Private Pay			
Gross Pay			\$529.10

year to date
192.06
600.00
1,018.00
1,350.00
405.00
567.00
4,132.06

Other Benefits and Information

	this period	total to date
Total Hrs	70.00	558.00
1400 Hours	70.00	
Prior 1/2/H1.5		240.00
Reg/Ot/Hol		200.00
Total Hours		200.00
1400 Hours		958.00

Deductions	Statutory	
	Federal Income Tax	-66.05
	Social Security Tax	-32.81
	Medicare Tax	-7.67
	NY State Income Tax	-19.42
	New York Cit Income Tax	-12.39
	NY SUI/SDI Tax	-0.60
	Other	
	Union Dues	-5.40
	Car Fare	
	Adjustment	
	Car Fare	+18.00
Net Pay		\$402.76

545.13
256.19
59.91
152.32
95.96
4.80
37.80
-69.25

40 x 6.75 = 270
30 x 10.1 = 300
570

Your federal taxable wages this period are \$529.10



PARTNERS IN CARE
 1250 BROADWAY
 NEW YORK, NY 10001

Period Ending: 03/07/2003
 Pay Date: 03/14/2003

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 0
 NY: 0
 New York Cit: 0

JURGITA VAICAITIENE
 7122 BAY PKWY
 APT #2
 BROOKLYN, NY 11204

*last
 week
 before
 the flight
 to Europe*

Social Security Number: 352-96-6457

Earnings	rate	hours	this period
Regular	6.7500	45.00	303.75
Ot/Diff			18.43
Prior Pay	6.7500	14.00	94.50
Sp Pay			90.75
Weekend	6.7500	14.00	94.50
Hol@1.5			
Private Pay			
Gross Pay			\$601.93

year to date
2,018.25
226.01
94.50
690.75
1,396.00
546.75
567.00
5,539.26

Other Benefits and

Information	this period	total to date
Prior 1/2/H1.5	45.00	353.00
Reg/Ot/Hol	45.00	299.00
Total Hours	45.00	299.00
Total Hrs	73.00	741.00
Ytd Hrs 8685	45.00	
1400 Hours	73.00	
1400 Hours		1,449.25

Deductions	Statutory
Federal Income Tax	-79.74
Social Security Tax	-37.32
Medicare Tax	-8.73
NY State Income Tax	-24.41
New York Cit Income Tax	-15.13
NY SUI/SDI Tax	-0.60
Other	
Union Dues	-5.40
Car Fare	
Net Pay	\$430.60

719.04
343.43
80.32
200.45
126.50
6.60
48.60
-78.25

*40 x 6.75 = 270
 33 x 10.1 = 330*

601.93

Your federal taxable wages this period are \$601.93

Exhibit D

Handbook for Home Health Aides - Appendix

Partners in Care

PAYMENT POLICIES

ANSWERS TO MOST FREQUENTLY ASKED QUESTIONS ABOUT PAYMENT POLICIES

A. *How will a HHA know when to work?*

All HHAs are hired for hourly employment based on Partners' needs and the HHAs availability. HHAs must be available for work at times and locations scheduled by the Supervisor.

B. *How is the hourly pay rate determined?*

HHAs will be paid at the regular hourly rate of pay for all hours worked up to forty (40) and then time and a half (1.5x) minimum wage or payment at the regular hourly rate, whichever is greater, for all hours worked over forty (40) per week.

C. *What will be included in the weekly pay?*

Partners in Care will pay HHAs only for scheduled hours worked. Time spent traveling to and from cases will not be paid. (See sample pay stub which follows).

D. *What if a patient is not home at the time of the scheduled visit?*

Call the Supervisor from a phone booth in the area. The call will be reimbursed through the expense sheet. If a visit will be impossible that day, Partners will pay the HHA for one hour of work time for the attempted visit and try to assign the HHA to another case.

E. *What if the HHA needs to work overtime with the patient because the patient needs to go to and get home from the doctor?*

Call the Supervisor who will then approve or deny the need to provide escort services. Additional instructions will also be provided at the time of the call.

F. *How are expenses handled?*

Payment for your expenses claimed on the Expense Sheet will be included in your paycheck every other week. They are listed as "CARFARE" on your check stub and